

UTAH APPRAISER LICENSING AND CERTIFICATION BOARD

Heber M. Wells Building

Room 210

9:00 a.m.

January 27, 2016

Telephone Meeting

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director

Mark Fagergren, Education and Licensing Director

Jeffery Nielsen, Chief Investigator

Justin Barney, Hearing Officer

Judith Jensen, Assistant Attorney General

Amber Nielsen, Board Secretary

Kendelle Christensen, Education and Licensing Coordinator

James Bolton, Investigator

Craig Livingston, Investigator

BOARD MEMBERS PRESENT:

John E. Ulibarri, II, Chair

Kristin Coleman-Nicholl, Vice Chair

Daniel Brammer, Board Member

Jim Bringham, Board Member

PUBLIC PRESENT:

Michael Christensen

Vern Meyer

Jared Preisler

The January 27, 2016 meeting of the Appraiser Licensing and Certification Board began at 9:02 a.m. with Chair Ulibarri conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes –A motion was made and seconded to approve the minutes from the December 23, 2015 meeting as written. Vote: Vice Chair Coleman-Nicholl, yes; Board Member Brammer, yes; Board Member Bringham, yes. The motion carries.

Public Comment Period – Michael Christensen addressed the Board on the proposed language changes to the definition of “Appraisal Panel.” Mr. Christensen stated his concern that the proposed changes do not meet the Division and the Board’s intended objectives; and stated his concern that the proposed changes deeply delve into private business practice. Vice Chair Coleman-Nicholl asked Mr. Christensen if his comments were based on the most recent draft of the proposed changes or from an earlier draft.

Director Stewart stated the most recent draft does not contain the language Mr. Christensen referred to in his comments. Director Stewart will be presenting new language for discussion and consideration in his report.

DIVISION REPORT

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart reported the Board had previously agreed to keep the language as is and amend Section 61-2e-301. Use of License or Certified Appraisers. Under subsection (3) the Division proposed the addition of language which read "An Appraisal Management Company may maintain one or more appraisal panels as follows: (a) the rotation of assignments among each appraiser on the panel is not required; and (b) each appraiser on the panel who is competent to perform an assignment shall be given an equal opportunity to accept the assignment as any other appraiser on the panel. (4) (a) The Board may make rules with the concurrence of the Division consistent with this section relative to the use of Licensed or Certified Appraisers and Appraisal Panels; and (b) the Board may make rules with the concurrence of the Division consistent with this section relative to the removal of an appraiser from the Appraisal Panel."

Director Stewart presented the amended language that the industry is proposing, which reads, "An Appraisal Management Company may maintain one or more appraisal panels as follows: (a) the rotation of assignments among each appraiser on the panel is not required; and (b) each appraiser on the panel who is competent to perform an assignment shall be given an equal *the* opportunity to accept *assignments the assignment as any other appraiser on the panel; and (c) Broadcasting of appraisal assignments is prohibited.* (4)(a) The Board may make rules with the concurrence of the Division consistent with this section relative to the use of Licensed or Certified Appraisers and Appraisal Panels; and (b) the Board may make rules with the concurrence of the Division consistent with this section relative to the removal of an appraiser from the Appraisal Panel." The amended language also included changes to Section 61-2e-306. Removal of Appraiser from Appraisal Panel. in subsection (1)(b) to read "providing an opportunity for the appraiser to respond *or rebut* to the notification of the appraisal management company."

Director Stewart stated the reason for the prohibition of broadcasting appraisal assignments is that AMCs are broadcasting assignments with limited information. Director Stewart discussed the current requirements for an AMC when an assignment is offered. Director Stewart suggests the Division and the Board should first try to enforce what already in in place and see if that fixes the problem. Director Stewart discussed having AMCs disclose the score of an appraiser on their panel and how an appraiser might improve their score.

Director Stewart would like a consensus in the industry on this language by the end of the week so it can be sent to the legislature.

Vice Chair Coleman-Nicholl had a question regarding how to ensure the appraisers being offered assignments are competent. Director Stewart stated he is unsure how to enforce an AMC only sending assignment offers to competent appraisers since ultimately the appraiser is responsible to determine whether they are competent or not.

Vice Chair Coleman-Nicholl is concerned that an appraiser might accept an assignment which they are truly not competent to perform. Mr. Nielsen stated an appraiser who is not competent to complete an assignment they accept would need to have a complaint filed against them and investigated.

Vern Meyer is concerned the term “broadcast” might not be generally understood to mean the same thing. Mr. Meyer is also concerned about an appraiser becoming competent after the fact, which is prohibited by Fannie-Mae and HUD. Mr. Meyer recommends AMCs give a time period for when an appraiser receives an assignment before accepting the assignment, so multiple appraisers can accept the assignment; the AMC would then look at the qualifications of each appraiser and choose the best candidate based on the TILA qualifications.

Jared Preisler asked if an AMC is violating the rule if they offer an assignment to more than one appraiser since the word appraiser is only used singularly in the rule. Mr. Preisler asserts there is nothing good in having multiple appraisers accepting assignments before they can assess whether they are qualified to complete the scope of work. Mr. Nielsen addressed Mr. Preisler’s question and stated the Division cannot make a determination on whether the rule prohibits the offering of an assignment to more than one appraiser at this time without specific facts to consider. Mr. Nielsen will look into that and get back to the Board at a later date. Mr. Fagergren cautions the Division and the Board from assuming that an appraiser who accepts an assignment quickly is incompetent. Mr. Preisler agrees with Mr. Fagergren on that point. Mr. Preisler stated the bad practice comes from an appraiser accepting an assignment before they understand the full scope of work and later requesting more time or compensation and being informed they will not be included to accept the assignment the next time. Mr. Nielsen feels that some of this could be addressed in rule making authority if the legislation on customary and reasonable fees passes.

Mr. Christensen is concerned about regulatory micro-management. Mr. Christensen is concerned about any over-reach which might have unintended consequences. Mr. Christensen asks that the Division and the Board exercise great caution before getting involved in business practices.

Mr. Nielsen feels Mr. Preisler’s concerns regarding reasonably requesting more time or compensation based on the scope of work of an assignment would be addressed in the disclosure of the ranking or scoring of appraisers on a panel by an AMC.

Mr. Meyer proposed the legislation be changed to allow the Division and Board to create a committee and write rules regulating these issues on which the industry seemingly cannot come to a consensus. Mr. Meyer would like to ensure that the assignments are not given on a first come first served basis.

Director Stewart proposed that the language dealing with broadcasting being prohibited be stricken; and proposed the addition to subsection (4)(a) The Board may make rules with the concurrence of the Division consistent with this section relative to the use of

Licensed or Certified Appraisers and Appraisal Panels, *and how appraisal assignments are offered to appraisers.*" With that wording, the Division and Board would be able to draft rules after receiving input from various industry members and organizations. Chair Ulibarri asks that the new language with the proposed change just presented by Director Stewart be emailed to the Board Members and if accepted, forwarded onto the legislature. The rest of the Board concurred with Chair Ulibarri.

ENFORCEMENT REPORT – Jeffery Nielsen

Mr. Nielsen reported in December the Division received 5 complaints; opened 1 new case; closed 0 cases; leaving 28 appraisal cases open with the Division. There are a total of 18 cases are now with the AG's office.

Mr. Nielsen announced the position for an Appraisal Investigator is currently open and will close next week; however, the opening may be extended until there is an adequate pool of applicants to consider.

Stipulation for Review

James R. Shaw

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported there were no licensing or disciplinary lists for review.

Mr. Fagergren reported in 1965 the Utah Chapter of the International Association of Assessing Officers was created. It is the 50th Anniversary, and the Division wants to congratulate this Chapter for helping enhance the professionalism of our Utah Assessing Officers.

COMMISSION AND INDUSTRY ISSUES

Rule Updates – Justin Barney

Mr. Barney stated there were no licensing stipulations for review or on any rule updates.

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Ulibarri, yes; Vice Chair Coleman-Nicholl, yes; Board Member Brammer, yes; Board Member Thronsdon, yes; Board Member Bringham, yes. The motion passes.

CLOSED TO PUBLIC

An Executive Session was held from approximately 10:03 a.m. to 10:08 a.m.

OPEN TO PUBLIC

RESULTS OF EXECUTIVE SESSION

Results of Stipulation:

James R. Shaw - Approved

A motion was made to adjourn the meeting. Vote: Chair Ulibarri, yes; Vice Chair Coleman-Nicholl, yes; Board Member Brammer, yes; Board Member Bringhurst, yes. The motion passes. The meeting adjourned at approximately 10:09 a.m.